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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,892	02/19/2004	Heinz Kettler	A-8927 .NOMP	9071

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05/27/2005

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EXAMINER

NELSON JR, MILTON

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,892

Applicant(s)

KETTLER ET AL.

Examiner

Milton Nelson, Jr.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-45 is/are pending in the application.
- 4a) Of the above claim(s) 20-27 and 35-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-19 and 28-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/12/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information referred to in the information disclosure statement filed January 12, 2005 has been considered.

Election/Restrictions

Applicant's election without traverse of Group 1, Figures 1-3, claims 12-19 and 28-34 in the reply filed on March 15, 2005 is acknowledged.

Claims 20-27 and 35-45 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected embodiment of the invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 15, 2005.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12-19 and 28-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 9 to 10 of claim 12, it cannot be determined if Applicant intends to positively claim the bevel in at least one of the structures "or" in the at least one cross strut. In line 2 of claim 16, "the connecting means" lack proper antecedent basis. Line 2 of claim 17 is grammatically vague. Note the recitation "wherein the piece furniture has". Claims 13-15, 18 and 19 are indefinite since each depends from an indefinite claim. In line 1 of claim 28, "the outside" lacks proper antecedent basis. In line 4 of claim 28, it is unclear if Applicant intends to positively claim that the cover extends "or" at least some sections of the cover extends. In claim 33, it cannot be determined whether Applicant intends to positively claim a folding chair "or" a stacking chair "or" a garden lounger. In claim 33, the phrase "or the like" renders the claim indefinite because the claim include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim unascertainable. Claims 29-32 and 34 are indefinite since each depends from an indefinite claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-14, 16 and 18, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Borggren et al (3844612). Note the cover (10), struts (1, 1), strut movement (by way of members 22-30), groove (4), thickened end (12), cross strut (22, 25), release between the strut and cross strut (portion 25 can be released from hole 15 in member 1), bevel (5), pin (26), hole (24), and stacking chair (see Figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 17, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 103(a) as being unpatentable over Borggren et al (3844612) in view of Bottemiller (2004/0160109).

The primary reference shows all claimed structural features of the instant invention with the exception of a cross connecting bow with two lower projections which can be placed into upper openings of the at least two struts. Note the discussion of Borggren et al above.

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The secondary reference conventionally teaches the concept of configuring a seating assembly with a cross connecting bow (46) with two lower projections (64, 66) which can be placed into upper openings (56, 56) of at least two struts (42, 44).

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings found in the secondary reference by adding a cross connecting bow with two lower projections, and upper openings in the two struts, wherein the projections can be placed into the upper openings. Such provides an assembly for improving head support and overall comfort of the chair, while accommodating tensions applied on the flexible cover.

Claim 19, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 103(a) as being unpatentable over Borggren et al (3844612) in view of Schmid et al (6030040).

The primary reference shows all claimed structural features of the instant invention with the exception of the cover consisting essentially of textiles.

The secondary reference conventionally teaches the concept of configuring a seating assembly with a cover consisting essentially of textiles.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings found in the secondary reference configuring the cover as consisting essentially of textiles. Such provides a cover assembly that is configured for accommodating tensions applied to the cover.

Allowable Subject Matter

Claims 15 and 29-34 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 28 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Amendment/Arguments

Applicant's responses filed March 15, 2005 and December 6, 2004 have been fully considered. Remaining issues are described in the above sections. Application of Lo (6517161) to the claims has been withdrawn in view of Applicant's amendment and arguments. Lo fails to show at least the bevel, as claimed. The original Office action included a typographical error. The prior art rejection presented in the last paragraph on page 3 had Lo (6517161) listed. This rejection should have had Borggren et al (3844612) listed. Borggren et al is currently applied against the claims.

Conclusion

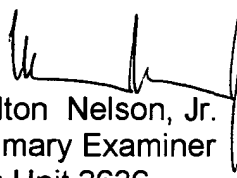
This Office action has not been made final since it includes a new grounds of rejection not necessitated by Applicant's amendment.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 5712726861. The examiner can normally be reached on Monday-Wednesday, and alternate Fridays 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Milton Nelson, Jr.
Primary Examiner
Art Unit 3636

mn
May 25, 2005